

END USER SOFTWARE LICENSE AGREEMENT CMH-17 STATS SOFTWARE

THIS END USER SOFTWARE LICENSE AGREEMENT (“EULA”), dated this _____ day of _____, 20____ (“Effective Date”) is by and between WICHITA STATE UNIVERSITY, a state educational institution of Kansas, acting in its capacity as distributor of the Composite Materials Handbook (“CMH-17”), 1845 Fairmount, Wichita, KS 67260-0129 (hereinafter “WSU”), and _____

with its primary business location at _____
(hereinafter “LICENSEE”).

WHEREAS, LICENSEE has placed its order for the CMH17 STATS DP V2011 1.1.XLSM (“LICENSED PRODUCT”); and

WHEREAS, LICENSEE has requested an unlicensed copy of the LICENSED PRODUCT to install on a single computer (CPU); and

WHEREAS, WSU is willing to provide an unlicensed copy of the LICENSED PRODUCT to LICENSEE subject to certain restrictions.

NOW THEREFORE, in consideration of the above premises and the individual and mutual promises of the parties hereinafter set forth, and for other good and valuable consideration, it is hereby agreed by and between the parties:

1. LICENSE GRANT. Subject to the terms and conditions set forth herein, WSU grants LICENSEE a non-exclusive, non-transferable (except as expressly permitted herein), revocable (as set forth herein), limited license to:

1.1 Install LICENSED PRODUCT on a single computer.

1.2 Allow the use of LICENSED PRODUCT on only the computer where the LICENSED PRODUCT is installed as set forth in Section 1.1.

1.3 Except as expressly set forth in this EULA, no other express or implied right or license is granted to LICENSEE.

2. LICENSE LIMITATIONS. LICENSEE agrees not to:

2.1 Use the LICENSED PRODUCT to develop software applications for use or distribution to any third party, whether in whole or part, whether as standalone products or as components;

2.2 Rent, lease, sell, re-sell, sublicense, perform or offer any type of services to third parties relating to the LICENSED PRODUCT, including but not limited to, consulting, training, assistance, outsourcing, service bureau, customization or development unless specifically authorized to do so in writing;

2.3 Otherwise make the LICENSED PRODUCT available to any third party;

2.4 Modify, adapt, reverse engineer, decompile, disassemble, or otherwise translate all or part of the LICENSED PRODUCT; or

2.5 Interfere with or disrupt the integrity or performance of the LICENSED PRODUCT.

3. ACKNOWLEDGEMENTS.

3.1 This license is effective upon the Effective Date of the License and shall terminate in accordance with the provisions herein.

3.2 LICENSEE agrees to operate the LICENSED PRODUCT only in accordance with the terms and conditions of this EULA and all applicable laws and government regulations.

3.3 LICENSEE shall (a) be responsible for its, and as applicable its personnel's compliance with this Agreement, as well as compliance by authorized users, (b) use reasonable efforts to prevent unauthorized access to or use of the LICENSED PRODUCT, and (c) notify WSU immediately of any such unauthorized access and/or use of which LICENSEE becomes aware.

4. PAYMENT.

4.1 In consideration of the rights and licenses provided hereunder, LICENSEE shall pay the charges applicable for each LICENSED PRODUCT at the rate(s) of FOUR HUNDRED SEVENTY FIVE DOLLARS (U.S. \$475.00), plus any applicable taxes and fees.

4.2 Upon execution of this EULA and receipt of LICENSEE's purchase order, WSU shall make available to LICENSEE the LICENSED PRODUCT.

4.3 Payment shall be made in U.S. Dollars, and will be sent by LICENSEE within thirty (30) days of Effective Date of this EULA to:

National Institute for Aviation Research
Attn: CMH17 STATS Software
1845 Fairmount, Campus Box 93
Wichita, KS 67260-0093

5. COMPLIANCE.

5.1 LICENSEE certifies that to the best of its knowledge neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.6, or otherwise declared ineligible for the award of contracts by any Federal agency. LICENSEE shall provide immediate written notice to WSU if at any time LICENSEE learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5.2 LICENSEE further agrees to comply with all U.S. Laws relating to the transfer, export, or re-export of technical data (as defined in the Export Regulations defined herein) that is subject to export controls under the International Traffic in Arms Regulations (ITAR) 22 Code of Federal Regulations Parts 120-130 or the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774 and agrees not to export any such data without an export license to any employee or other person who is not a U.S. Citizen or permanent resident, as well as to corporations or to any other entity, organization, or group that is not incorporated or otherwise organized to do business in the United States. LICENSEE shall notify WSU in writing prior to disclosure of any technical data or other items subject to EAR or ITAR to WSU. LICENSEE will reasonably cooperate with and support

WSU in obtaining the correct Export Control Classification Number (ECCN), classification of United States Munitions List (USML) category, and any necessary licenses or authorizations required to complete the SOW.

6. INTELLECTUAL PROPERTY. LICENSEE hereby acknowledges that WSU retains all right, title and interest in and to all intellectual property rights in the LICENSED PRODUCT and all modifications, enhancements or other derivative works thereof. The LICENSED PRODUCT is licensed, not sold, and this EULA confers no ownership interests or rights to LICENSEE. LICENSEE shall preserve and reproduce all copyright, patent and trademark notices which appear in the LICENSED PRODUCT. LICENSEE recognized that the methodologies and techniques contained in or expressed with the LICENSED PRODUCT are proprietary information or trade secrets of WSU. LICENSEE shall treat them as confidential and not disclose them.

7. WARRANTY, LIMITATIONS AND MERCHANTABILITY.

7.1 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WSU MAKES NO WARRANTIES REPRESENTATIONS OR CONDITIONS FOR THE LICENSED PRODUCT, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON INFRINGEMENT. WSU disclaims any liability for any use or application of any LICENSED PRODUCT or the results or decisions made or obtained by users of the LICENSED PRODUCT. Except to the extent required by applicable law, WSU does not warrant that (i) the functions of LICENSED PRODUCT will meet LICENSEE's requirements or will enable it to attain the objectives LICENSEE has set for itself, or (ii) they will operate in the combination or environment selected for use by LICENSEE, or (iii) the operation of the LICENSED PRODUCT will be uninterrupted or free of errors.

7.2 In all instances, LICENSEE shall be solely responsible for ensuring that the results produced by LICENSED PRODUCTS comply with quality and safety requirements of LICENSEE's products or services. No employee or agent of WSU is authorized to give a greater or different warranty. LICENSEE shall have exclusive responsibility for (a) program selection to achieve LICENSEE's intended results, (b) LICENSED PRODUCT installation, (c) taking adequate measures to properly test, operate and use each LICENSED PRODUCT and (d) results obtained therefrom.

8. INDEMNIFICATION AND LIMITATION OF LIABILITY.

8.1 WSU shall not be liable to LICENSEE or their respective customers and related parties, for any special, incidental, indirect, or consequential damages resulting from defects in the design, testing, labeling, manufacture, distribution, sale, use or other application of any LICENSED PRODUCT manufactured, tested, designed, sublicensed, or sold pursuant to this Agreement.

8.2 LICENSEE shall defend, indemnify and hold WSU, and its respective officers, directors, employees, and legal representatives, harmless from any and all claims, demands, actions and causes of action, arising in connection with any and all injuries, losses, damages or liability of any kind whatsoever arising, directly or indirectly, out of the practice under the LICENSED PRODUCT pursuant to this Agreement, or the use, exploitation, distribution, or sale of LICENSED PRODUCT. This indemnification obligation shall include, without limiting the generality of the foregoing, reasonable attorney fees and other costs or expenses incurred by WSU, and its respective officers, directors, employees, and legal representative in connection with the defense of any and all such claims, demands, actions, or causes of action.

9. TERM AND TERMINATION.

9.1 **TERM.** This Agreement shall become effective on the Effective Date and shall remain in effect for one (1) year from the Effective Date. This Agreement shall automatically renew, without additional compensation and without notice, for successive terms equal in duration to the Initial Term (each a "Renewal Term") except that a party may terminate this Agreement by providing sixty (60) days written notice prior to the end of the Initial Term or a Renewal Term. Any such termination shall be effective upon the expiration of the then-current term.

9.2 **TERMINATION.** This Agreement may be terminated earlier in its entirety without liability to the terminating party as follows: (a) by either party upon thirty (30) days written notice in the event the other party materially breaches this Agreement, which breach is not cured within said thirty (30) days, or (b) by either party immediately upon notice upon the institution of any insolvency, bankruptcy or similar proceeding by or against the other party including an assignment for the benefit of creditors, the appointment of a receiver over assets, an attachment of assets lasting more than thirty (30) days, or the other party ceases to conduct its business operations in the ordinary course of business.

9.3 **EFFECT OF TERMINATION.** The parties' rights and obligations under Sections 1, 2, 3, 5, 6, 7, and 8 shall survive termination of this Agreement. Upon termination of this Agreement for any reason, LICENSEE's right to access and use the LICENSED PRODUCT immediately ceases. Termination of this Agreement shall not relieve Licensee of its obligation to pay any fees owing under this Agreement.

10. MICELLANEOUS.

10.1 **ENTIRETY OF AGREEMENT.** This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements and understandings relating to the subject matter hereof. If any provisions in an attachment conflict with the terms of this Agreement, the terms set forth in this Agreement shall control. This Agreement shall be binding upon and inure to the benefit of the parties. This Agreement cancels, supersedes, and revokes all prior negotiations, representations, and agreements between the parties, whether oral or written, relating to the subject matter of this Agreement, notwithstanding, any non-disclosure or confidentiality agreements directly relating to the SOW. No supplement, modification or amendment of this Agreement shall be binding unless made in writing and signed by a duly authorized representative of each Party.

10.2 **HEADINGS.** The article or section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intentions of the parties.

10.3 **AUTHORITY TO BIND.** The parties represent that they are permitted to enter into this Agreement, to consent to its conditions, and that they have the authority to sign this Agreement. This Agreement may be signed in two or more counterparts.

10.4 **GOVERNING LAW.** This Agreement and all amendments, modifications, alterations, or supplements hereto, and the rights of the parties hereunder, shall be construed, interpreted, and applied in accordance with the laws of the state of Kansas. Any action to enforce the provisions of the Agreement shall be brought in a court of competent jurisdiction and proper venue in Sedgwick County, Kansas.

10.5 **COUNTERPARTS/EXECUTION.** Each counterpart is deemed an original and all counterparts together shall constitute one and the same instrument. Each party agrees that delivery of an executed copy of this Agreement via facsimile transmission or other electronic means shall have the same force and effect as

delivery with original signatures, and that each party may use facsimile signatures or signature via other electronic means as evidence of the execution and delivery of this Agreement to the same extent that original signatures could be used.

10.6 **ELECTRONIC SIGNATURES.** The parties agree that this Agreement may be signed with electronic signatures. Whenever either Party executes an electronic signature on this Agreement, it has the same validity and meaning as a handwritten signature and shall be legally binding equivalent. The parties agree that neither Party will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and/or authorized same to be executed by their duly authorized representatives as of the date shown below the respective signatures, said Agreement to become effective as of the later date.

WICHITA STATE UNIVERSITY**LICENSEE**

SIGNATURE

SIGNATURE

Dr. John Tomblin**PRINTED NAME**

PRINTED NAME

EVP for Research and Industry & Defense
Programs**TITLE**

TITLE

DATE

DATE